

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL DOCKET NO.: 5:04CR28**

THIS MATTER is before the Court on Defendant's "Motion for Copy of Trial

Transcripts and Docket Sheet," filed August 25, 2006.¹

On March 14, 2005, Defendant pled guilty to the charge of conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841 and 846 (Count One), and using and carrying a firearm during and in relation to a drug trafficking crime and aiding and abetting, in violation of 18 U.S.C. §§ 924(c) and 2 (Count Five). On August 9, 2005, Defendant was sentenced to 262 months imprisonment on Count One and 60 months imprisonment on Count Five, to run consecutively with Count One, for a total of 322 months imprisonment. Judgment was entered on August 29, 2005.

On August 14, 2006, Defendant filed a Motion to Vacate pursuant to 28 U.S.C. § 2255. On August 16, 2006, the Court granted Defendant's Motion to Vacate, but only for the purpose of allowing Defendant to timely pursue a direct appeal of his underlying criminal case. The Court directed the Clerk to prepare an Amended Judgment so that Defendant could file a timely appeal. On August 25, 2006, Defendant filed a Notice of Appeal, along with the instant Motion.

¹As described in more detail below, Defendant did not participate in a trial but rather pled guilty on March 14, 2005. A more thorough reading of Defendant's Motion leads the Court to conclude that Defendant is seeking a copy of the transcript of his sentencing hearing, held August 9, 2005.

On August 30, 2006, the Amended Judgment was entered, and the transmission of the Notice of Appeal was sent to the United States Court of Appeals for the Fourth Circuit. On September 12, 2006, the Fourth Circuit appointed James Rice, Jr. to represent Defendant for all purposes of the appeal. The appeal is still pending before the Fourth Circuit.

Defendant now asks the Court for a copy of his sentencing transcripts and a docket sheet. Defendant contends that he is “preparing and perfecting his § 2255 Motion, but requires a copy of his sentencing transcript to complete his motion.” However, as noted above, Defendant already filed a Motion to Vacate pursuant to 28 U.S.C. § 2255, which was granted for limited purposes on August 16, 2006. Transcripts are provided to indigent prisoners in proceedings brought under 28 U.S.C. § 2255, “. . . if the trial judge or circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.” 28 U.S.C. § 753(f). Thus, since the Court already ruled on Defendant’s Motion to Vacate, it determined that a copy of the sentencing transcript was not necessary. Additionally, the Fourth Circuit will be provided with all documentation it needs to rule on Defendant’s appeal. Therefore, Defendant’s Motion for Transcripts is moot.

Furthermore, Defendant is now represented by counsel for purposes of his appeal. Thus, Defendant needs to obtain the requested docket sheet from his attorney prior to making such a request from the Court.

IT IS, THEREFORE, ORDERED that Defendant’s “Motion for Copy of Trial Transcripts and Docket Sheet” is hereby **DENIED**.

Signed: October 2, 2006



Richard L. Voorhees
United States District Judge

